

## **REMARKS**

### **Status of the Claims**

Upon entry of the amendment above, claims 1-20 will be pending, claims 1 and 18 being independent.

### **Summary of the Office Action**

Claim 9 is rejected under 35 USC §112, second paragraph, as being indefinite.

Claims 1, 2, and 5-9 are rejected under 35 USC §102(b) as being clearly anticipated by CRETINON (U.S. Patent No. 6,000,148).

Claims 3 and 4 are rejected under 35 USC §103(a) as being unpatentable over CRETINON.

### **Response to the Office Action**

#### **A. Summary of the Amendment**

In the amendment above, Applicant has amended paragraphs 0018, 0033, 0034, and 0036 of the specification for improving the form thereof.

Claims 1 and 9 have been amended and new claims 10-20 have been added.

No prohibited new matter has been added.

#### **B. Withdrawal of Rejection Under 35 USC §112, Second Paragraph**

In response to the rejection of claim 9, Applicant has amended the claim to improve its form. Specifically, it has been specified that it is the shape of the reinforcement elements that are asymmetrical which provide for an asymmetrical reinforcement of the upper and the bottom assemblies of the footwear.

In view of the amendment, reconsideration and withdrawal of the rejection is requested.

**C. Withdrawal of Rejections Based Upon CRETINON**

At least for the following reasons, Applicant requests that the rejections based upon CRETINON be withdrawn.

In paragraphs 0003-0007 of the Background section of the specification of the instant application, Applicant has summarized certain aspects of the disclosure of CRETINON (U.S. Patent No. 6,000,148), CRETINON being the Applicant of the instant application. Paragraph 0007 describes the boot of CRETINON as being too rigid in the transverse direction for certain users.

In the invention of the instant application, therefore, first and second reinforcement elements are coupled together via a flexible coupling, such as via a shock-absorbing intermediate sole to provide for a transverse flexibility.

By contrast, in CRETINON the reinforcement element 20 is made in one piece with the "core layer 4" and, thereby, they are not divided, either front-to-back or side-to-side; they are not coupled via an intermediary sole. Thus, there is no transverse flexibility, or transverse coupling, between first and second reinforcement elements, as specified in Applicant's claim 1.

Further, although the Office action identifies element 5 of CRETINON as "a shock absorbing intermediate sole," elements 4 and 20 of CRETINON would still be "coupled" (i.e., connected together), even if element 5 were to be omitted. By contrast, with the invention the first and second reinforcement elements are attached *via* an intermediate/intermediary sole.

More particularly, the first and second reinforcement elements of the invention have a clearance therebetween, such as in the area of the plantar arch, thereby provided.

With the foregoing in mind, Applicant has amended claim 1 to emphasize that "said first reinforcement element and said second reinforcement element [are] coupled together via said flexible coupling" (emphasis added).

At least in view of the foregoing, reconsideration and withdrawal of the rejection based upon CRETINON is requested. In addition, Applicant submits that there would have been no reason to have modified the disclosed boot of CRETINON in a way that would have resulted in the invention of Applicant's instant application.

In the amendment above, Applicant has added new claims 10-20, which emphasize additional aspects of the invention.

For example, claim 10, which depends from claim 2, specifies that the first and second reinforcement elements are assembled to the intermediary sole within depressions thereof.

Further, claim 11 specifies that the first and second reinforcement elements are spaced apart. Because the elements 4 and 20 of CRETINON are made in one-piece, they are not spaced apart. Claim 12 further specifies that the first and second reinforcement elements are spaced apart at least in a plantar arch zone of the bottom assembly. Still further, claim 13 specifies that the reinforcement elements are spaced apart by no more than 5 millimeters, and claim 14, depending from claim 10, specifies that the reinforcement elements are assembled to the surface depressions of the intermediary sole with adhesive.

New claim 15, depends from claim 2 and specifies that the first and second reinforcement elements are assembled to surface depressions in the intermediary sole with an adhesive, leaving a clearance between them at least in the plantar arch zone of the bottom assembly.

New claim 16, also depending from claim 2, describes the second reinforcement element as encircling a rear end of the upper and extending forwardly in the form of medial and lateral returns, with each of the returns extending transversely toward a respective edge of said first reinforcement element, leaving a clearance with said first reinforcement element.

Claim 17 depends from claim 16 and further specifies the clearances between the lateral/medial returns and the first reinforcement element as being no greater than 5 millimeters.

New claim 18, also directed to an article of footwear, is independent and includes several limitations neither taught nor suggested by CRETINON.

For example, the first and second reinforcement elements of claim 18 are specified as being "separately attached to said intermediary sole with adhesive."

Still further, claim 18 specifies the "second reinforcement element extending around a rear of said upper and a rear of said bottom assembly, and extending forwardly in the form of medial and lateral returns."

Additionally, claim 18 calls for "each of said returns of said second reinforcement element extending transversely toward a respective edge of said first reinforcement element, leaving a clearance with said first reinforcement element."

New claim 19 depends from claim 18 and calls for the clearances to be no greater than 5 millimeters.

In addition, new claim 20, depending from claim 19, calls for the intermediary sole to have "depressions for receiving said first and second reinforcement elements, said first and second reinforcement elements being attached to said intermediary sole in said depressions with adhesive."

**SUMMARY AND CONCLUSION**

The grounds of rejection advanced in the Office action have been addressed and are believed to be overcome. Accordingly, reconsideration and allowance are respectfully requested.

Neither a fee nor an extension of time are believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

If it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicant requests an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,  
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